IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATION NO. 205 OF 2001

Custodian of the Banco
Nacional Ultramarino,
having his office at
State Bank of India Bldg.,
at Panaji, ... Petitioner

Versus

Shantaram Narayan Zantye,
r/o Altinho, Panaji. ... Respondent.

Smt. S. Naik, advocate for the petitioner.

Shri S. V. Patil, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE : 17th July, 2003.

ORAL JUDGMENT

None present for the petitioner when the matter is called out.

2. The record would show that the suit preferred by the petitioner which came to be dismissed by the trial Court by Order dated 17th April, 1964, was decreed in appeal by Judgment dated 15th April, 1969. Against that order an S.L.P. was preferred before the Apex Court, which came to be disposed of by the Apex Court by its Judgment dated 30th July, 1982. The Apex Court upheld the judgment passed by the First Appellate Court. However, while disposing of the appeal it observed that in some suits some of the appellants had pleaded set off and that had been rejected by the Court of the Additional Judicial Commissioner by declining to enter into the merits of the claims. The Apex Court held that the Court

in that respect had erred and to do complete justice between the parties having regard to the peculiar circumstances of the cases it was of the opinion that so far as those claims were concerned, the trial Court should now examine them on their own merits.

3. It transpires that the petitioner herein applied for execution of the decree and that was objected to by the respondent on the ground that no decree had been passed by the Additional Judicial Commissioner and at any rate, the same had not been filed. In these circumstances, the appellant applied for a decree. An objection was raised on behalf of the respondent herein that a decree could not be executed as the amount was not quantified. That objection was upheld and the application was rejected.

4. In the meantime, the petitioner herein applied by an application to the trial Court being Civil Misc. Application NO.561/2000/A, considering the judgment of the Apex Court, that the respondent herein be directed to lead his evidence on his claim. The learned trial Court held that as suit is decreed the court becomes functus officio and as such, declined to entertain the said application. Revision has been preferred against that order.

5. The present application is not an application in the suit or proceedings in the normal sense in which it would

be understood. It is an application pursuant to the directions of the Apex Court whereby the claim of the respondent herein by way of set off was to be considered. Even if the suit had been disposed of the issue of set off would have been left open for consideration and if the trial Court on evidence led by the respondent herein found on merits in favour of the respondent herein it would have to accordingly adjust the amount decreed in favour of the petitioner herein by amending the decree in terms of its judgment. It is therefore clear that the Order of the trial Court suffers from an error apparent and must consequently be set aside.

In the light of that the following Order:-

The impugned Order dated 24th January, 2001 is set aside. Civil Misc. Application No.561/2000/A is allowed. The defendant is directed, if he so desires to lead his evidence. The trial Court considering the facts and circumstances, if the appellant seeks to lead any evidence on the evidence led by the respondent herein, to permit them to do so and thereafter to dispose of the suit by considering the directions of the Apex Court as recorded in its judgment dated 30th July, 1982.

The revision application is accordingly allowed. In

the circumstances of the case there shall be no order as to costs.

F. I. REBELLO, J.

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